

Using Superfund Special Account Funds for Indirect Costs
Principals Meeting
June 2015

Purpose: Decide whether EPA should distribute funds in Superfund special accounts to pay for Agency indirect costs associated with managing special accounts.

Committee Background:

- As a result of the OIG report, *Improved Management of Superfund Special Accounts Will Make More Funds Available for Clean-ups (March 18, 2009)*, the Agency established a Special Accounts Senior Management Committee (SASMC) in 2009.
- The establishment, planning, and use of special accounts require extensive coordination among the regions and Headquarters offices, and the SASMC is responsible for overall oversight and management of special accounts for the Agency.
- The SASMC is comprised of senior career officials (Office Director level) in the following Headquarters offices and lead regions that have responsibility for managing special accounts:
 - OSWER/OSRTI (Committee Chair)
 - OECA/OSRE
 - OCFO/OB
 - OCFO/OFM
 - OCFO/OFS
 - Region 2 (Lead Region for Superfund FY 2015 – FY 2016)
 - Region 9 (Lead Region for Management FY 2015 – FY 2016)
- The SASMC operates by consensus, and the Charter that governs the SASMC provides that the Chair will elevate unresolved issues, as needed, to the appropriate senior level official(s) at the Assistant Administrator level or above for resolution.

Issue Background:

- Section 122(b)(3) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) authorizes the EPA to retain and use funds received pursuant to an agreement with a potentially responsible party (PRP) to carry out the purpose of that agreement.
- EPA places these funds into “special accounts” in the Superfund Trust Fund, and uses the funds to finance site-specific CERCLA response actions at the site for which the account was established.
 - Current model settlement language provides for the following: “The total amount to be paid by Settling [**Defendants or Parties**] shall be deposited in the [**Site Name**] Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the Hazardous Substance Superfund.”
- As of April 2015, there is \$3.2 billion available in more than 1,000 open accounts being managed by EPA.
- Examples of the type of costs special account funds are currently used for include payroll, contract, and grant expenditures for response work at specific sites.
- EPA’s indirect costs are typically collected as part of CERCLA settlement agreements, and may be deposited into either a special account for future response work at that site or the Superfund Trust Fund for future appropriation by Congress.
- Superfund indirect costs are defined by the Agency as costs that support the Superfund program as a whole and cannot be easily identified to any one site.

Summary of SASMC Discussion to Date:

- The Office of Budget proposed this concept to the SASMC in July 2013, and the topic continued to be discussed at the SASMC's semi-annual meetings in January 2014, August 2014, and March 2015.
- **Exemption 5 - Attorney-Client Privilege**

[REDACTED]

- The SASMC has discussed different approaches by which special account funds could be used for indirects, **Exemption 5 - Deliberative Process**

[REDACTED]

- The SASMC has most recently discussed **Exemption 5 - Deliberative Process**

[REDACTED]

- The SASMC has not been able to reach consensus on whether funds in special accounts should be used to pay for Agency indirect costs. In addition, Region 2 and Region 9, in their respective lead region roles for Superfund and Management, discussed this concept with their regional counterparts **Exemption 5 - Deliberative Process**

[REDACTED]

Potential Benefits of Using Special Accounts to Fund Agency Indirect Costs:

- **Exemption 5 - Deliberative Process**

[REDACTED]

Potential Risks of Using Special Accounts to Fund Agency Indirect Costs:

- **Exemption 5 - Deliberative Process**

[REDACTED]

[REDACTED]

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